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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047433
Party	Plaintiff Gado S.A.R.L.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GADO S.R.L.,

Petitioner,

Cancellation No. 92047433

v.

JAY-Y ENTERPRISE CO., INC.,

Respondent.

STIPULATION FOR PROTECTIVE ORDER

Pursuant to Rule 2.116(g), the parties hereto hereby stipulate to use the revised version of the Board's standard protective order filed concurrently herewith.

Dated: July 15, 2009

/s/ Mark Lerner

Mark Lerner
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Attorneys for Petitioner
GADO S.R.L.

Dated: July 15, 2009

/s/ Kenneth L. Wilton

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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GADO S.R.L.,

Petitioner,

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v.

JAY-Y ENTERPRISES CO., INC.,

PROTECTIVE ORDER

Registrant.

Information disclosed by any party – either petitioner, GADO S.R.L., registrant JAY-Y ENTERPRISES CO., INC. (the “Parties”) – or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, the parties have agreed to be bound by the terms of this order. As used in this order, the term "information" covers both oral testimony and documentary material.

Agreement of the parties is indicated by the signatures of the parties’ attorneys and/or the parties themselves at the conclusion of the order. The terms are binding from the date the parties or their attorneys sign the order.

To preserve the confidentiality of the information so disclosed, the Parties agree to be bound as follows:

TERMS OF ORDER

1) Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all *inter partes* proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a Party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

“*Confidential*” information means information in written, oral, electronic, graphic/pictorial, audiovisual, or other form, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise:

- (a) that is designated as such by the producing Party,
- (b) that constitutes or contains a trade secret or other confidential research, development, or commercial information, and
- (c) the disclosure of which information (i) is likely to have the effect of harming the competitive position of the producing Party or (ii) would violate an obligation of confidentiality to a third person, including a court.

Examples of confidential information. “Confidential” information includes, by way of example but not of limitation, the trade secrets, software, code, processes, operations, research, technical or developmental information, know-how, production, marketing, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of the producing Party. Any document produced by any Party designated by it as “Confidential” shall be deemed confidential for purposes of this Order.

“*Confidential - Counsel’s Eyes Only*” information means “Confidential” information that is designated as “Confidential – Counsel’s Eyes Only” by counsel for the producing Party for the purpose of further limiting access to that information because the producing Party deems the information particularly sensitive. Counsel for the Parties shall exercise good faith in designating information as “Confidential - Counsel’s Eyes Only.”

Examples of “Confidential – Counsel’s Eyes Only” information. “Confidential – Counsel’s Eyes Only” information includes, by way of example but not of limitation, trade secrets that derive economic value, actual or potential, from not being known to the public or to other persons who can obtain economic value from its disclosure, cost and profit information, customer information or lists, income statements, financial plans, strategic plans, forecasts, budgets, and correspondence between each party and its employees regarding such information.

The designation of material as “Confidential” or “Confidential - Counsel’s Eyes Only” means that the protected information, and any information derived therefrom, shall be used solely for the purposes of this action and for no other purpose and shall not be disclosed to or discussed with any person or entity except as permitted by this order.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by the non-designating Party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating Party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written

evidence of the lawful possession; (d) is disclosed by a non-designating Party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating Party with the approval of the designating Party.

3) Access to Protected Information.

The provisions of this order regarding access to protected information are subject to modification by written agreement of the Parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the Parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the Parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the Parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

- **Parties** are defined as the Parties to this action, and include individuals, officers of corporations, partners of partnerships, and management employees representing the Parties.
- **Attorneys** for the Parties are defined as outside counsel and in-house counsel who are actively engaged in the proceeding, as well as support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.
- **Independent experts or consultants** include individuals retained by a Party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the Party or its attorneys or a competitor of the Party that did not retain the expert or consultant.
- **Non-party witnesses** include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

Parties shall not have access to information designated as "*Confidential - Counsel's Eyes Only*," subject to any agreed exceptions.

Attorneys for the Parties shall have access to information designated as "*Confidential - Counsel's Eyes Only*."

Independent experts or consultants, non-party witnesses, and any other individual not otherwise specifically covered by the terms of this order may be afforded access to *Confidential* information in accordance with the terms that follow in paragraph 4. Further, independent experts or consultants may have access to material designated "*Confidential- Counsel's Eyes*

Only” if such access is agreed to by the Parties or ordered by the Board, in accordance with the terms that follow in paragraphs 4 and 5.

4) Disclosure to Any Individual.

Prior to disclosure of protected information by any Party or its attorney to any individual not already provided access to such information by the terms of this order, that individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the Party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this order. The Party or attorney receiving the completed form shall retain the original.

5) Disclosure to Independent Experts or Consultants.

In the event that protected information is intended to be disclosed to any independent expert or consultant, in addition to meeting the requirements of paragraph 4 the disclosing Party or attorney must also notify the Party that designated the information as protected. Notification must be personally served or forwarded by certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the expert or independent consultant.

The Party or its attorney receiving the notice shall have ten (10) business days from receipt of the notice of intention to disclose in which to object to disclosure to the expert or independent consultant. If objection is made, then the Parties must negotiate the issue before raising it before the Board. If the Parties are unable to settle their dispute, then it shall be the obligation of the Party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the Parties have made to settle their dispute. The Party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

6) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36 that the responding Party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from Paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing Party learns of its error, by informing the adverse Party, in writing, of the error. The Parties should inform the Board only if necessitated by the filing of protected information not in accordance with the provisions of paragraph 12.

7) Production of Documents.

If a Party responds to requests for production under Federal Rule 34 by making copies of documents and forwarding them to the inquiring Party, then the copies shall be

prominently stamped or marked, as necessary, with the appropriate designation from Paragraph 1. If the responding Party makes documents available for inspection and copying by the inquiring Party, all documents shall be considered protected during the course of inspection. After the inquiring Party informs the responding Party what documents are to be copied, the responding Party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing Party learns of its error, by informing the adverse Party, in writing, of the error. The Parties should inform the Board only if necessitated by the filing of protected information not in accordance with the provisions of paragraph 12.

8) Depositions.

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing Party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested Party shall make oral note of the protected nature of the information.

The transcript of any deposition and all exhibits or attachments shall be considered protected for 30 days following the date of service of the transcript by the Party that took the deposition. During that 30-day period, either Party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation from Paragraph 1. Appropriate stampings or markings should be made during this time. After that 30-day period, any and all parts of the transcript and exhibits thereto that have not been designated as protected shall be deemed unprotected.

9) Filing Notices of Reliance.

When a Party or its attorney files a notice of reliance during the Party's testimony period, the Party or attorney is bound to honor designations made by the adverse Party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

10) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing Party, or any adverse Party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 12 of this order.

11) Handling of Protected Information.

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case. The recipient of any protected information

disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

12) Redaction; Filing Material with the Board.

When a Party or attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contains such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that is subject to a protective order or agreement. The confidentiality of the material is to be maintained and this envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

13) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a Party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing Party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

14) Challenges to Designations of Information as Protected.

If the Parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the

disclosing Party. If the Parties are unable to resolve their differences, the Party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneously with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging Party will be expected to show why it could not have made the challenge at an earlier time.

The Party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) Board's Jurisdiction; Handling of Materials after Termination.

The Board's jurisdiction over the Parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

Within 30 days after the final termination of this proceeding, the Parties and their attorneys shall return to each disclosing Party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing Party or its attorney may make a written request that such materials be destroyed rather than returned. If the designating Party or its attorney requests that such materials be destroyed, the recipient shall certify that such destruction has taken place within 30 days of receiving the request. The Parties agree that archival copies of evidence and briefs may be retained, subject to compliance with the safeguards set forth in this order.

The obligation not to disclose confidential material shall survive termination of this proceeding, whether by settlement or by decision of the Board.

16) Violation of This Order

Upon a violation or threatened violation of this order, any Party may make an application to the Board or a United States District Court of competent jurisdiction for immediate relief to prevent the violation, further violation or threatened violation of the order and for contempt of Court, as well and for all other remedies and sanctions available under the Federal Rules of Civil Procedure and other applicable laws. In addition, by executing this order, counsel for the Parties agree to use their reasonable best efforts to prevent any violation or threatened violation of this order.

17) Other Rights of the Parties and Attorneys.

This order shall not preclude the Parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order.

**By Agreement of the
Following, effective**

July 14, 2009

/s/ Kenneth L. Wilton
Kenneth L. Wilton, Esq.

Seyfarth Shaw LLP
Attorneys for Registrant
JAY-Y ENTERPRISES CO.,
INC.

/s/ Mark Lerner
Mark Lerner

SATTERLEE STEPHENS
BURKE & BURKE LLP
Attorneys for Petitioner GADO
S.R.L.

By Order of the Board, effective _____.

Signed

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GADO S.A.R.L.,

Petitioner,

Cancellation No. 92047433

v.

JAY-Y ENTERPRISES CO., INC.,

Registrant.

**CERTIFICATION UNDER
PROTECTIVE ORDER**

I hereby certify that any and all information designated Confidential pursuant to the Protective Order (“the Order”) in the above-identified action shall not be disclosed except as provided in the Order and that I have been given a copy of and have read the Order and will abide by its terms.

Dated: _____, 2009

SIGNED

NAME, TITLE